

February 22, 2017

SENT VIA EMAIL (Randy Fiorini [randall.fiorini@deltacouncil.ca.gov] and Jessica Pearson [jpearson@deltacouncil.ca.gov])

Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

**RE: 2016 Annual Report and Items 12 and 16 for the Meeting on
February 23rd and 24th**

Dear Chair Fiorini and Council Members:

This letter is on behalf of the Local Agencies of the North Delta (“LAND”).¹ LAND has worked since the creation of the Delta Stewardship Council (“DSC”) to ensure it follows its statutory mandates, particularly with respect to protection of local Delta communities, water supplies and agricultural operations.

2016 Annual Report

Upon reviewing the 2016 Delta Stewardship Council (“DSC”) Annual Report,² we were surprised to see that this report failed to mention that the DSC’s Delta Plan had been set aside by the Superior Court of Sacramento on May 18, 2016. (See May 18, 2016 Ruling on Submitted Matter.) The Court held that the Delta Plan was invalid and later ordered the DSC to revise the Delta Plan and to adopt or readopt any applicable regulations to:

- Include quantified or otherwise measurable targets associated with achieving reduced Delta reliance, reduced environmental harm from

¹ LAND member agencies cover an approximately 118,000 acre area of the Delta; current LAND participants include Reclamation Districts 3, 150, 307, 317, 349, 407, 501, 551, 554, 556, 744, 755, 813, 999, 1002, 2111, 2067, Maintenance Area 9 South, and the Brannan-Andrus Levee Maintenance District. Some of these agencies provide both water delivery and drainage services, while others only provide drainage services. These districts also assist in the maintenance of the levees that provide flood protection to homes and farms.

² Available at: <http://deltacouncil.ca.gov/docs/2016-annual-report-0>

invasive species, restoring more natural flows, and increased water supply reliability, in accordance with the Delta Reform Act;

- Provide a flow policy that includes quantified or otherwise measurable targets; and
- Promote options for water conveyance and storage systems.

(November 23, 2016 Order Regarding Petition for Writ of Mandate in *Central Delta Water Agency et al. v. DSC* and *California Water Impact Network et al. v. DSC* cases at p. 3.)

The public would also benefit from information regarding those issues on which the Court sided with the DSC. For instance on the issue of “water supply reliability” the State and Federal Water Contractors argued that regulations that limit the use of Delta water violate the Delta Reform Act’s mandate that the Delta Plan “support water supply reliability.” (Wat. Code, § 85302, subd. (d).) On that issue, the Court held that both the language of the Delta Reform Act and record evidence established “that reduced Delta reliance supports water supply reliability.” (May 18, 2016 Ruling on Submitted Matter, pp. 39-41.)

LAND understands that the DSC has appealed this ruling and takes the position for that reason that the Plan is not set aside at this time, but it is important for DSC to be transparent with the public about the Delta Plan. LAND suggests that DSC prepare an Addendum to the Annual Report that explains the present state of the Delta Plan and its related litigation, and make this document available to the public along with the Annual Report.

Priorities for Investment in Delta Levees and Amendments Concerning Storage, Conveyance and Operation

LAND has begun to review the materials associated with items 12 and 16 for this week’s meeting. LAND has had inadequate time for detailed comments but would like to provide the following preliminary response:

1. Priorities for Levee Investment

LAND recommends that the DSC consider ways to use the information that has become available this winter regarding the actual condition of Delta levees prior to adopting priorities. Rather than rely on modeling or other anecdotal information, this winter has provided actual information regarding the condition of levees and flood

control risks. This information helps support LAND's position that local Delta levees, even in agricultural areas, continue to warrant state investment. In any case, LAND continues to support the Department of Water Resources' levee program having the flexibility to determine appropriate investments in real time rather than being bound by an inflexible priority list.

2. Amendments Concerning Storage, Conveyance and Operation

These materials appear to again be aimed at ensuring no interference with the California WaterFix/Delta Tunnels project. It was this lack of leadership, and compliance with the 2009 Delta Reform Act, that led to the 2013 Delta Plan being set aside by the court in 2016. The purpose of these Delta Plan amendments and eventual regulations should be implementing the coequal goals, including protection of the Delta as a place. Promotion of major new diversions in the Delta to export water is not required by the statute, and indeed, such new diversions would conflict with the coequal goals. LAND also notes that none of the information in the materials for this item mention avoiding impacts to terrestrial wildlife from any new conveyance, and that no scientific support for new diversions has been provided.

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Thank you for considering these comments. LAND will continue to participate in the DSC's process to provide additional input as these items proceed.

Very truly yours,

SOLURI MESERVE
A Law Corporation

By: 

Osha R. Meserve

cc (via email): Melinda Terry (melinda@northdeltawater.net)
Dante Nomellini, Sr. (ngmplcs@pacbell.net)
Tom Keeling (tkeeling@freemanfirm.com)